

<p>1                   EDWARD NECARSULMER, III  2 materiality standards or SEC disclosure  3 standards, it's based in the reasonableness of  4 the investigation?</p> <p>5           A. Yes.  6           Q. And nothing else?</p> <p>7           MR. GLUCKOW: Objection to the  8 form.</p> <p>9           The report speaks for itself. I  10 don't know if you want to engage in any  11 dialog on this.</p> <p>12           In the conclusion section here,  13 the last section on Page 2, Summary  14 Number 4, it talks about both the  15 reasonableness of the investigation and  16 the reasonableness of the belief. If  17 you want to lump that all into the  18 reasonableness of the investigation,  19 that's fine. I just don't want there  20 to be an unclear record; that there's  21 clearly at least two pieces of it in  22 terms of the written opinion.</p> <p>23 BY MR. LEWIS:  24           Q. Let me back up a different way.  25           In a case in which a problem</p>	<p>1                   EDWARD NECARSULMER, III  2 this thing is out there, they decided  3 it wasn't significant to the company's  4 sales and earnings, and then they  5 decided to move on, I would support  6 that, I think that's -- I think that's  7 proper.</p> <p>8 BY MR. LEWIS:  9           Q. And if that happened, do you  10 believe that excuses the company from any  11 disclosure obligation?</p> <p>12           MR. GLUCKOW: Objection to the  13 form. Outside the scope of the  14 opinion. He's not offering any expert  15 testimony as to the company's  16 disclosure obligations; he's offering  17 expert testimony with respect to the  18 underwriters' investigation and the  19 reasonableness of the underwriters'  20 beliefs in light of that investigation.</p> <p>21 BY MR. LEWIS:  22           Q. Well, let me back up and ask  23 that question, and that is at the heart of what  24 my question is about. Does your opinion in any  25 way purport to address the company's disclosure</p>
<p>1                   EDWARD NECARSULMER, III  2 exists, the underwriters conduct a diligent  3 investigation, and notwithstanding having  4 conducted an investigation in full accordance  5 with reasonable industry standards, the  6 problem is still out there and it's not  7 disclosed in the prospectus or registration  8 statement and the problem then thereafter  9 bites the company, are you saying that the  10 underwriters have no disclosure obligation  11 because they conducted a reasonable  12 investigation?</p> <p>13           MR. GLUCKOW: The same objections  14 as before. Incomplete hypothetical.  15 It calls for speculation. It calls for  16 a legal conclusion. Incomplete  17 hypothetical. Assumes facts not in  18 evidence.</p> <p>19           You can answer.</p> <p>20           THE WITNESS: I mean, here's what  21 I would say. I would say that to the  22 extent that the underwriters made a  23 reasonable and diligent investigation,  24 they discovered -- and in this  25 investigation they discovered whatever</p>	<p>1                   EDWARD NECARSULMER, III  2 obligation, to your knowledge?</p> <p>3           A. No, I wasn't asked -- it's not  4 within the scope of my assignment.</p> <p>5           Q. And your opinion with respect to  6 disclosure such as it is relates only to the  7 underwriters' disclosure obligations, is that  8 fair?</p> <p>9           MR. GLUCKOW: Objection to the  10 form. It's not the underwriters'  11 disclosure obligations; it's the  12 underwriters' investigation and the  13 reasonableness of their belief in the  14 accuracy and completeness of the  15 registration statement.</p> <p>16           I'm not sure what you're getting  17 at with your parsing disclosure  18 obligations of the company --</p> <p>19           MR. LEWIS: I'm sitting here and  20 letting you filibuster, but you can  21 object to the questions, and you have,  22 and you've done it fully, on this whole  23 subject matter. You don't have to  24 supply what his opinion is about. He  25 knows what his opinion is about, and he</p>

<p>1                   EDWARD NECARSULMER, III  2 can tell me that, he can correct me,  3 but --</p> <p>4                   MR. GLUCKOW: I just think your  5 question is inherently misleading, and  6 I'm trying to make sure that both I and  7 the witness understand what it is you  8 are trying to ask.</p> <p>9 BY MR. LEWIS:</p> <p>10                  Q. Let's look at Paragraph F of  11 your rebuttal report, Exhibit 322.</p> <p>12                  You write, starting in the  13 second sentence of Paragraph F: "While  14 Ochoa's report is not clear on this point,  15 although underwriters often review filings of  16 other companies in the same industry, as they  17 did here, the mention of a risk in such  18 filings is not necessarily determinative of  19 whether the risk needs to be included in the  20 issuing company's registration statement."</p> <p>21                  Can you explain what you mean  22 by that?</p> <p>23                  A. Sure.</p> <p>24                  What I'm saying is basically  25 that it's certainly good practice to look at</p>	<p>1                   EDWARD NECARSULMER, III  2 each case has to be separately evaluated?</p> <p>3                   MR. GLUCKOW: Objection to the  4 form. Vague and ambiguous.</p> <p>5                   You can answer.</p> <p>6                   THE WITNESS: I think that's  7 fair.</p> <p>8 BY MR. LEWIS:</p> <p>9                   Q. After the due diligence  10 investigation in the Daimler case that you  11 mentioned, did gray marketing later affect the  12 results of Daimler-Benz?</p> <p>13                  A. No, or not to my knowledge.</p> <p>14                  I... Not to my knowledge.</p> <p>15                  Q. What information do you  16 understand the underwriters received from Adams  17 itself about gray marketing or Costco by the  18 time of the effective date of the IPO?</p> <p>19                  A. They -- they -- you know,  20 there's a number of items. They knew that an  21 action -- I'm not sure of the name for it and if  22 action is the right word for it, but there had  23 been a legal challenge. I think they had  24 records from talking to marketing people, you  25 know, that they had discussed it. Certainly</p>
<p>1                   EDWARD NECARSULMER, III  2 what the competition is doing, what they are  3 filing, the most recent, whatever, 10-K,  4 whatever they are filing with the SEC. The  5 fact that you see something doesn't  6 necessarily mean that it's a requirement to be  7 included in either your documents or in your  8 opinion.</p> <p>9                  I guess what I'm trying to say  10 in a broader sense is there's a huge body of  11 information out there, both things you learn  12 from the company and the things you might  13 learn from the industry and whatever else, and  14 when it comes down to it, the underwriter's  15 job is to go through those things and make a  16 decision as to what is material and what is  17 not.</p> <p>18                  Q. You went on to say: "Each  19 factual situation is different and the  20 underwriters must evaluate appropriate  21 disclosure on an individual basis," correct?</p> <p>22                  A. Correct.</p> <p>23                  Q. Would it be fair to say that  24 your position is that because gray marketing  25 affects different companies in different ways,</p>	<p>1                   EDWARD NECARSULMER, III  2 Lehman in deposition, I believe from  3 Pulido-Crowe, they discussed whether they should  4 talk to Costco. Those are the types of things.</p> <p>5                  Q. Do you think that Lehman should  6 not have talked to Costco because Barney Adams  7 purportedly stated that it was unnecessary to do  8 so?</p> <p>9                  MR. GLUCKOW: Objection to the  10 form. Calls for speculation.</p> <p>11                  Incomplete hypothetical.</p> <p>12                  You can answer.</p> <p>13                  THE WITNESS: I think probably  14 not necessarily. I think there's  15 another problem with talking to the  16 Costcos of the world, is you don't  17 normally -- it's pretty hard -- almost  18 by definition of who they are, they are  19 not going to tell you anything, and  20 that is part of their MO which is  21 relatively well-known. So whether they  22 are right for that reason or right  23 because that's what they heard from  24 Adams, I don't -- I think, it's my  25 opinion, that they were adequate in</p>

<p style="text-align: right;">Page 102</p> <p>1                   EDWARD NECARSULMER, III 2                   what they did. 3 BY MR. LEWIS: 4           Q. Do you agree that it would have 5           been better to try calling Costco to see what 6           could be found, if anything? 7           A. I don't know that hindsight is 8           particularly useful for me in this case. 9           Q. Well, if you apply it, with the 10          benefit of hindsight, do you think it would have 11          been a better thing to do? 12          MR. GLUCKOW: Objection. Asked 13          and answered. 14          You can answer it now. 15          THE WITNESS: I still don't think 16          they would have found anything 17          significant. 18 BY MR. LEWIS: 19          Q. Now, you referred in Paragraph C 20          of your rebuttal report to the underwriters 21          having conducted 11 telephonic interviews. 22          Let me show you Exhibit 198. 23          MR. LEWIS: I'm sorry; this says 24          160, is it not? 25          MR. GLUCKOW: 160.</p>	<p style="text-align: right;">Page 104</p> <p>1                   EDWARD NECARSULMER, III 2                   compiled; is that the question? 3           Q. Not how the list was compiled, 4           but how when the customer calls were made by the 5           underwriters, the underwriters figured out who 6           they were going to call? 7           MR. GLUCKOW: And which 8           underwriters are going to call which 9           party, or...? 10          Objection to form. 11          THE WITNESS: I'm not sure. 12 BY MR. LEWIS: 13          Q. Well, Adams had a large universe 14          of suppliers; is that fair to say? 15          A. Yes. 16          Q. And it had a large universe of 17          customers also, correct? 18          A. Correct. 19          Q. Do you know how the underwriters 20          made the determination of which customers they 21          would call? 22          A. A list was provided by the 23          company. 24          Q. Was that based on the size of 25          the customers' business with Adams?</p>
<p style="text-align: right;">Page 103</p> <p>1                   EDWARD NECARSULMER, III 2                   THE WITNESS: Mine says 198. 3 BY MR. LEWIS: 4           Q. They were marked -- the same 5           document was marked several times. Just so we 6           are all looking at the same thing, you have in 7           front of you one numbered 160? 8           A. I gave you back 198, which I 9           had. 10          Q. Okay. 11          A. Now I have 160. 12          Q. Were the 11 calls that you 13          referred to in your rebuttal report the 11 calls 14          that are enumerated on the second page of this 15          exhibit under the heading of Customer Calls, 16          summaries circulated to underwriters by caller 17          and supplier calls? 18          A. That is correct. 19          Q. Do you know if any of these 20          calls were selected by the underwriters to be 21          made on a geographic basis? 22          A. I don't. 23          Q. Do you know how the calls were 24          selected to be made? 25          A. It -- what -- how this list was</p>	<p style="text-align: right;">Page 105</p> <p>1                   EDWARD NECARSULMER, III 2           A. I don't know for sure, but I 3           assume so. That is traditionally the way it is 4           done. 5           Q. Traditionally which -- what 6           level of customers of a company does an 7           underwriter call in due diligence? 8           A. There's no magic to this, but 9           traditionally, you know, you say, "Give me your 10          top ten customers." It could be out of the top 11          50, the top five, but the top ten sticks in my 12          memory. 13          Q. Is that a practice you have used 14          yourself? 15          A. Yes, it is. 16          Q. I'll show you what's previously 17          been marked as Exhibit 162. Was this one of the 18          documents that you reviewed in your work on this 19          case? 20          A. It was. 21          Q. Did you see in reviewing it that 22          on the right-hand column of the page for a 23          period of 1998, the firm of WDC Mackenzie, 24          M-A-C-K-E-N-Z-I-E, was listed as the third 25          largest customer of Adams?</p>

1                   EDWARD NECARSULMER, III  
 2                   A. I do.

3                   Q. Do you believe that there was  
 4 any reason why the underwriter should not have  
 5 called Mackenzie in the due diligence process?

6                   MR. GLUCKOW: Objection to the  
 7 form. Mischaracterizes the document in  
 8 the record.

9                   You can answer.

10 BY MR. LEWIS:

11                  Q. Let me back up. Do you know who  
 12 Mackenzie is?

13                  A. From reading the documents, I  
 14 know who they are; yes, I do.

15                  Q. Do you know that they are a  
 16 retailer who had spoken to Adams about a  
 17 potential gray market Costco problem in Canada?

18                  MR. GLUCKOW: Objection to the  
 19 form. Mischaracterizes the record.

20                  You can answer.

21                  THE WITNESS: I know they were  
 22 the Canadian, I'll say, distributor or  
 23 retailer of Adams.

24 BY MR. LEWIS:

25                  Q. And what, if any, communications

1                   EDWARD NECARSULMER, III  
 2                  Q. Do you believe that there should

3 have been contact between the underwriters and  
 4 Mackenzie as part of due diligence?

5                  A. No.

6                  Q. And why is that?

7                  A. I'll say that I don't know

8 whether they were given, you know -- the list of  
 9 customers that they were given simply didn't  
 10 include them.

11                  I guess I would also add that  
 12 it's okay -- I wouldn't necessarily think --  
 13 and, again, it's very hard to put yourself  
 14 back in their place, but I wouldn't  
 15 necessarily think if I was trying to uncover  
 16 or discover or investigate, that Canada would  
 17 be a place that I would, you know, spend a lot  
 18 of time looking for issues relative to  
 19 southern California or Florida or someplace  
 20 where I would intuitively have thought may  
 21 have been more important to a golf club  
 22 company.

23                  Q. You have seen the questionnaire  
 24 that Adams sent to -- strike that; that the  
 25 underwriters sent to Adams' retailers as part of

1                   EDWARD NECARSULMER, III  
 2 can you recall between Mackenzie and Adams on  
 3 the subject of gray market or Costco?

4                   MR. GLUCKOW: Between Mackenzie  
 5 and Adams?

6                   MR. LEWIS: Right, between  
 7 Mackenzie and Adams.

8                   THE WITNESS: I saw a series of  
 9 documentation -- faxes, memos, whatever  
 10 you want to call them -- going back and  
 11 forth suggesting that they were having  
 12 questioning of how these clubs -- were  
 13 they in Costco and how they got there  
 14 and what the company is going to do  
 15 about it.

16 BY MR. LEWIS:

17                  Q. Are you aware of any contact  
 18 between the underwriters and Mackenzie as part  
 19 of the due diligence process?

20                  A. None.

21                  Q. Did you have any understanding  
 22 as to why there was no contact between the  
 23 underwriters and Mackenzie in the due diligence  
 24 process?

25                  A. I don't. I don't.

1                   EDWARD NECARSULMER, III  
 2 the due diligence process?

3                  MR. GLUCKOW: Objection to the  
 4 form. It assumes facts not in  
 5 evidence.

6                  You can answer.

7                  BY MR. LEWIS:

8                  Q. Have you seen questionnaires --  
 9                  A. Yes.

10                 Q. -- that were used in connection  
 11 with the underwriters' investigation of  
 12 retailers?

13                 A. I have.

14                 Q. And would it be fair to say that  
 15 those questionnaires did not include any  
 16 specific questions relating to gray marketing or  
 17 Costco?

18                 MR. GLUCKOW: Objection to the  
 19 form. Vague and ambiguous.

20                 You can answer.

21                 THE WITNESS: The answer is yes,  
 22 but I would think that the statement,  
 23 "Are there any other issues (legal,  
 24 contractual, or otherwise) which you  
 25 feel are important" would certainly

<p style="text-align: right;">Page 110</p> <p>1           EDWARD NECARSULMER, III 2 take care of that responsibility. 3           MR. LEWIS: I move to strike the 4 latter part of that. We'll get to the 5 overall -- the larger question within 6 the questionnaires.</p> <p>7 BY MR. LEWIS: 8           Q. Have you seen Exhibit 193? 9           A. Yes, I've seen it. 10          Q. Is it your understanding that 11 this is a blank copy of a Customer Due Diligence 12 Questionnaire that was used by the underwriters 13 in connection with the due diligence 14 investigation? 15          A. That's my understanding. 16          Q. Now, you mentioned, in response 17 to an earlier question, that the underwriters 18 had received information about gray marketing 19 from marketing people at Adams. 20          Can you tell me when in your 21 understanding that information was received? 22          MR. GLUCKOW: Objection to the 23 form. It mischaracterizes the 24 testimony. 25          You can answer.</p>	<p style="text-align: right;">Page 112</p> <p>1           EDWARD NECARSULMER, III 2 to Adams concerning Costco or gray marketing 3 after Adams issued the press release that it 4 had filed a proceeding against Costco? 5           MR. GLUCKOW: Can I have that one 6 back, please. Thank you. 7           (The court reporter read the 8 record as follows: 9           "QUESTION: Can you recall, as 10 you sit here, any inquiries made by the 11 underwriters to Adams concerning Costco 12 or gray marketing after Adams issued 13 the press release that it had filed a 14 proceeding against Costco?" 15          MR. GLUCKOW: Vague and 16 ambiguous. 17          You can answer. 18          THE WITNESS: I don't recall. 19 BY MR. LEWIS: 20          Q. Have you, in your long career in 21 the securities industry, been the person who had 22 to ask a customer information that was set forth 23 on a questionnaire? 24          A. I've done it but not in recent 25 memory or recent history.</p>
<p style="text-align: right;">Page 111</p> <p>1           EDWARD NECARSULMER, III 2           THE WITNESS: I can't tell you 3 when. I know there was a press release 4 in June, I believe it was June. 5 BY MR. LEWIS: 6           Q. June -- 7           A. I assume it was coincident or 8 before that time. I just can't tell you from 9 not having the documents; my memory isn't that 10 good. 11          Q. Well, do you recall any 12 testimony by Ms. Pulido-Crowe that the subject 13 of gray marketing came up during drafting 14 sessions? 15          A. I do recall that testimony. I 16 actually recall, to be exact, she said she 17 believed that it came up. 18          Q. In the drafting sessions? 19          A. Yes. 20          Q. And the drafting sessions were 21 all held in April? 22          A. Correct. 23          Q. Do you know -- strike that. 24          Can you recall, as you sit 25 here, any inquiries made by the underwriters</p>	<p style="text-align: right;">Page 113</p> <p>1           EDWARD NECARSULMER, III 2           Q. When you were -- 3           A. Younger. 4           Q. -- younger and I was younger and 5 we all were browned on top. 6           Can you describe how difficult or 7 easy you found it to get a customer to answer 8 the questions on a due diligence questionnaire? 9           MR. GLUCKOW: Vague and 10 ambiguous. 11          You can answer. 12          THE WITNESS: My best 13 recollection is it's sort of both ends 14 of the spectrum. There are people who 15 like to talk; they are very 16 enthusiastic about XYZ's product; it's 17 important to them. There are other 18 people who basically tell you that they 19 don't talk much about, you know, their 20 suppliers. So it's -- people are 21 usually pretty cooperative, they are 22 usually -- but the value of the 23 information varies greatly. 24 BY MR. LEWIS: 25           Q. And you never know when exactly</p>

1 EDWARD NECARSULMER, III  
 2 you are getting someone and what kind of mood  
 3 he's in or she is in at the time you catch them,  
 4 is that fair?

5 MR. GLUCKOW: Vague and  
 6 ambiguous.

7 You can answer.

8 THE WITNESS: It's fair, with the  
 9 exception that you hope that, you know,  
 10 that you are good enough and you  
 11 understand enough about the subject to  
 12 qualify the responses.

13 BY MR. LEWIS:

14 Q. Was it your practice to actually  
 15 send customers questionnaires before you spoke  
 16 to them about the contents of them?

17 A. No.

18 Q. You used the questionnaire as a  
 19 guide to your conversation with the client and  
 20 pulled the information out of them as best you  
 21 could?

22 MR. GLUCKOW: Objection to the  
 23 form.

24 You can answer.

25 THE WITNESS: That's correct.

1 EDWARD NECARSULMER, III  
 2 ongoing gray marketing distribution or ongoing  
 3 Costco distribution, would you agree that  
 4 Question 13 would not be a very direct way to  
 5 find that out?

6 MR. GLUCKOW: Objection to the  
 7 form. Incomplete hypothetical.  
 8 Assumes facts not in evidence. Vague  
 9 and ambiguous.

10 You can answer.

11 THE WITNESS: I would not agree  
 12 to that. Often these -- whether they  
 13 are a list of questions or they are a  
 14 questionnaire, you sent them out there  
 15 to set a framework to find out what you  
 16 can find out, and often it's more  
 17 useful to ask a question like this one  
 18 than -- sometimes it is -- than a more  
 19 direct "Are you doing this?" or "Are  
 20 you seeing that?" Because you might  
 21 get a more helpful response.

22 BY MR. LEWIS:

23 Q. Well, if the recipient of this  
 24 questionnaire had heard from Adams previously  
 25 that Adams was aware of some Costco distribution

1 EDWARD NECARSULMER, III

2 BY MR. LEWIS:

3 Q. Do you know how the  
 4 questionnaires were completed in this case?

5 A. They were -- it's my  
 6 understanding that they were -- there were  
 7 telephone or other conversations and they were  
 8 recorded by the questioner, the results were  
 9 recorded by the questioner.

10 Q. So that the questionee did not  
 11 necessarily -- did not have the questionnaire in  
 12 front of him?

13 A. I do not know that for a fact,  
 14 but that's my understanding.

15 Q. Now, I showed you the blank  
 16 questionnaire and that questionnaire contains  
 17 the question that you alluded to in the portion  
 18 of your testimony that I asked to strike, which  
 19 is Question 13: "Are there any other issues  
 20 (legal, contractual or otherwise) which you feel  
 21 are important?"

22 That is Question 13, correct?

23 A. Correct.

24 Q. If you wanted to determine in a  
 25 due diligence investigation whether there was

1 EDWARD NECARSULMER, III  
 2 and was taking steps to address it, the person  
 3 answering the questions might not think that  
 4 mentioning gray marketing was of any  
 5 importance. Is that fair?

6 MR. GLUCKOW: The same  
 7 objections.

8 You can answer.

9 THE WITNESS: I'm not trying to  
 10 be difficult; I just don't know how to  
 11 answer and the hypothetical is too far  
 12 out there for me.

13 It's certainly -- if someone  
 14 specifically told you, "Don't worry  
 15 about it; we are taking care of it,"  
 16 I'm not sure that would deter you from  
 17 saying there's an issue but the company  
 18 is taking care of it. I just don't  
 19 know.

20 BY MR. LEWIS:

21 Q. In any event, there was no  
 22 specific question about Costco or gray marketing  
 23 on that questionnaire --

24 MR. GLUCKOW: Objection.

25 BY MR. LEWIS:

<p style="text-align: right;">Page 118</p> <p>1                   EDWARD NECARSULMER, III  2           Q. -- the document that we just  3           looked at, 193?  4           MR. GLUCKOW: The document speaks  5           for itself.  6           You can answer.  7           THE WITNESS: I agree.  8           BY MR. LEWIS:  9           Q. Do you believe that between the  10          time of the filing of the draft registration  11          statement with the SEC, which was on May the 4th  12          of 1998, and the effective date of the IPO,  13          which was July 10, 1998, the underwriters  14          received any information from Adams that gray  15          marketing was occurring at any location other  16          than in Canada?  17           MR. GLUCKOW: Can I get that read  18          back, please.  19           (The court reporter read the  20          pending question.)  21           MR. GLUCKOW: Objection to the  22          form. It assumes facts not in  23          evidence.  24           You can answer.  25           THE WITNESS: I don't recall the</p>	<p style="text-align: right;">Page 120</p> <p>1                   EDWARD NECARSULMER, III  2           You can answer.  3           BY MR. LEWIS:  4           Q. Do you believe, as you sit here,  5           that it was true that at the time of the  6           effective date a group of Adams' clubs had  7           reached the market through Costco as a result of  8           the efforts of a single Adams' retailer?  9           MR. GLUCKOW: Objection. Vague  10          and ambiguous. Incomplete  11          hypothetical. Mischaracterizes the  12          record.  13           You can answer.  14           THE WITNESS: In the materials  15          that I reviewed, there were references  16          to a number of potential sources, and I  17          don't know if it was ever determined as  18          to it was one or more than one.  19           BY MR. LEWIS:  20           Q. Well, isn't it true that by the  21          time of the offering that there had been citations  22          of Adams' clubs at Costco locations in Canada,  23          in California, in Idaho?  24           MR. GLUCKOW: Objection to the  25          form. It mischaracterizes the record.</p>
<p style="text-align: right;">Page 119</p> <p>1                   EDWARD NECARSULMER, III  2           dates. I know there was discussion,  3           but I can't tell you whether they were  4           between -- what periods they were or  5           what the dates were.  6           BY MR. LEWIS:  7           Q. Well, are you aware of any  8           communication from Adams to the underwriters  9           that gray marketing was occurring other than at  10          a single location?  11           MR. GLUCKOW: The same  12          objections.  13           THE WITNESS: I'm not aware of  14          any communication.  15           BY MR. LEWIS:  16           Q. Do you believe, as you sit here,  17          that it was true at the effective date that a  18          small set of Tight Lies clubs had reached Costco  19          at only one location?  20           MR. GLUCKOW: Objection to the  21          form. Mischaracterizes the record --  22           THE WITNESS: I really don't  23          know.  24           MR. GLUCKOW: Let me just finish.  25          -- vague and ambiguous.</p>	<p style="text-align: right;">Page 121</p> <p>1                   EDWARD NECARSULMER, III  2           You can answer.  3           THE WITNESS: I think that's  4           true.  5           BY MR. LEWIS:  6           Q. How did you learn that?  7           A. It was in the documentation that  8          I read.  9           Q. Did you see that in any other  10          place than in the attachments to Mr. Grace's  11          report?  12           A. Yes.  13           Q. Where did you see it?  14           A. I'm not sure I can recall the  15          document. I'm not -- it may have been in a  16          deposition, either -- I'm not sure. I don't  17          want to speculate. I think Beebe's deposition,  18          but I'm not sure. I'm just not certain.  19           Q. Would you agree that by the time  20          of the initial public offering Adams had been  21          unable to put a complete stop to gray marketing?  22           MR. GLUCKOW: Vague and  23          ambiguous.  24           You can answer.  25           THE WITNESS: I would agree with</p>

1                   EDWARD NECARSULMER, III  
 2                   that.  
 3 BY MR. LEWIS:  
 4                   Q. Have you seen any evidence that  
 5 the underwriters were aware of new or increased  
 6 distribution of Adams' products in Costco  
 7 locations between the time of Ms. Pulido-Crowe's  
 8 discussion with Barney Adams and the time of the  
 9 IPO?  
 10                  MR. GLUCKOW: Objection. Vague  
 11 and ambiguous. Incomplete.  
 12                  THE WITNESS: Not during that  
 13 period, no.  
 14 BY MR. LEWIS:  
 15                  Q. And do you have any reason to  
 16 believe, as you sit here, that the underwriters  
 17 learned anything about the changes in gray  
 18 market distribution between Ms. Pulido-Crowe's  
 19 discussion with Barney Adams and the IPO?  
 20                  MR. GLUCKOW: Objection to the  
 21 form. It mischaracterizes the record  
 22 particularly with respect to the  
 23 reference to a discussion.  
 24                  You can answer.  
 25                  THE WITNESS: At some point, the

1                   EDWARD NECARSULMER, III  
 2                  A. The direction from research to  
 3 banking. So it wasn't a normal -- to me, it  
 4 wouldn't have been a normal practice, normal  
 5 procedure.  
 6                  Q. There would have been a  
 7 prohibition on information going the other  
 8 direction, from banking to research?  
 9                  A. That is correct.  
 10                 MR. GLUCKOW: Don, again, we've  
 11 been going another hour, so whenever  
 12 there is a convenient break.  
 13                 MR. LEWIS: We can stop this  
 14 second.  
 15                 MR. GLUCKOW: Okay.  
 16                 (A recess was had from 2:31 p.m.  
 17 to 2:43 p.m.; and then the proceedings  
 18 continued as follows:)  
 19 BY MR. LEWIS:  
 20                 Q. Let me back up to go forward.  
 21 In your expert report in this case, the first  
 22 page --  
 23                 A. So this is also the rebuttal  
 24 report.  
 25                 MR. GLUCKOW: Here we are, 321.

1                   EDWARD NECARSULMER, III  
 2 process of these pro shop surveys began  
 3 by the equity research analyst. I  
 4 believe that did start before the IPO.  
 5 I'm not certain that information would  
 6 have been -- in my experience, it was  
 7 unlikely that that information would  
 8 have been shared with the banking team.  
 9 BY MR. LEWIS:  
 10                 Q. Why do you say it's unlikely it  
 11 would have been shared?  
 12                 A. Because in most cases as they --  
 13 that the research that was done out of the  
 14 equity department would not likely to be, you  
 15 know, shared with; it was not normal practice to  
 16 share it with the people in the investment  
 17 banking side.  
 18                 Q. Did that have to do with the  
 19 existence of the so-called Chinese walls between  
 20 the investment banking and the research side,  
 21 the brokerage firms, in those days?  
 22                 A. Partially; although, there would  
 23 be nothing specifically prohibited of  
 24 information going that way.  
 25                 Q. "That way" meaning...?

1                   EDWARD NECARSULMER, III  
 2                  THE WITNESS: First page, yes.  
 3 BY MR. LEWIS:  
 4                 Q. The first page, Paragraph 6(A),  
 5 Summary of Opinions. You begin by saying: "In  
 6 my experience in the process of adequate due  
 7 diligence, the underwriters should gather and  
 8 review the following types of information. The  
 9 contents and scope of this review may vary  
 10 greatly depending on the issuer, but in general,  
 11 these are the categories that should be  
 12 considered."  
 13                 In your expert report in the AMF  
 14 case --  
 15                 MR. GLUCKOW: 324?  
 16                 MR. LEWIS: 324.  
 17 BY MR. LEWIS:  
 18                 Q. -- you used the same words  
 19 except that instead of "should be considered,"  
 20 you had used the words "must be considered."  
 21                 A. Semantics.  
 22                 Q. Is there any significance to the  
 23 change in your report?  
 24                 A. Semantics.  
 25                 Q. Did you think it was more

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1                   EDWARD NECARSULMER, III  
 2 correct to say "should" than "must"?

3                   A. I candidly can't answer that. I  
 4 think of -- I thought of the -- I tried to  
 5 conceive of the thought and I really didn't  
 6 refer to this much past -- the prior report,  
 7 much past kind of using it for form, and I knew  
 8 there was some boilerplate that would be  
 9 acceptable to be used in the beginning, and then  
 10 I kind of just went ahead and drafted as I saw  
 11 fit.

12                  Q. In the same Paragraph 6, the  
 13 next page --

14                  A. On AMF or Adams?

15                  Q. In Adams.

16                  Well, let's look at -- do you  
 17 have AMF there?

18                  MR. GLUCKOW: We have both, 321  
 19 and 324.

20 BY MR. LEWIS:

21                  Q. In AMF, among the steps you  
 22 listed was number 6: "Review of work performed  
 23 or reports prepared by underwriters' counsel and  
 24 the issuer's auditors."

25                  Your Paragraph 6 in this case

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1                   EDWARD NECARSULMER, III  
 2 to get at.

3                  Q. Okay. Would you agree with the  
 4 general proposition that in due diligence an  
 5 underwriter should be skeptical of rosy outlooks  
 6 by the issuer's management?

7                  MR. GLUCKOW: Object to the  
 8 form. Vague and ambiguous. Asked and  
 9 answered.

10                 You can answer.

11                 THE WITNESS: I don't think --  
 12 just because someone is optimistic  
 13 doesn't necessitate skepticism. We've  
 14 come to learn to live with rapid growth  
 15 in our -- once we got out of the '60s  
 16 and '70s, rapid growth was a big part  
 17 of our lives. So I would have to say  
 18 even though intuitively I would agree  
 19 with you, I think the right answer is  
 20 no.

21 BY MR. LEWIS:

22                  Q. Now, in Paragraph 6(C)(2) of  
 23 your report, you state that "An extensive due  
 24 diligence outline and materials request list was  
 25 prepared and presented to company management at

Page 127

1                   EDWARD NECARSULMER, III  
 2 simply read: "Meeting with the issuer's counsel  
 3 and public accountants."

4                  Can you explain whether there was  
 5 a difference that caused you to change your  
 6 report?

7                  MR. GLUCKOW: Object to the  
 8 characterization.

9 BY MR. LEWIS:

10                 Q. Is there any significance to the  
 11 change in terminology between the two reports?

12                 A. I thought in -- that the way I  
 13 said it in 321 was a better representation of  
 14 what the process really is.

15                 Q. Can you explain that thought?

16                 A. Because it occurred to me -- and  
 17 again, I didn't think it was a major thing -- it  
 18 sort of occurred to me that you weren't  
 19 necessarily just reviewing their work, you were  
 20 meeting with them, you were talking with them,  
 21 you were trying to understand, let's say, there  
 22 was a patent issue or an inventory issue, so it  
 23 wasn't just the report but you are trying to  
 24 have a dialog as part of your understanding of  
 25 the company; that was what I was really trying

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1                   EDWARD NECARSULMER, III  
 2 the organizational meeting."

3                  Just to make sure we are on the  
 4 same page: Are you referring there to Exhibit  
 5 153? Specifically, to the due diligence -- due  
 6 diligence outline and request list that begins  
 7 at Page 8741?

8                  A. Yes, that is to what I was  
 9 referring.

10                 Q. And would it be fair to say that  
 11 there was no specific request in the due  
 12 diligence outline or materials request for data  
 13 relating to either Costco or gray marketing?

14                 MR. GLUCKOW: Objection to the  
 15 extent the document speaks for itself.

16                 You can answer.

17                 THE WITNESS: That's correct. If  
 18 I could add, in this type of a list it  
 19 doesn't surprise me at all that there  
 20 isn't specific caption items. It's  
 21 usually given to let the company know  
 22 what the work ahead of them is.

23 BY MR. LEWIS:

24                 Q. Okay. Is there any item on the  
 25 due diligence list or materials request list

33 (Pages 126 to 129)

1                   EDWARD NECARSULMER, III  
 2 that you believe should have caused the company  
 3 to provide the underwriters with any data  
 4 regarding either Costco or gray market  
 5 distribution?

6                   MR. GLUCKOW: Object to the  
 7 form. The document speaks for itself.  
 8 It calls for speculation.

9                   You can answer.

10                  THE WITNESS: No.

11                  BY MR. LEWIS:

12                  Q. Let me show you Exhibit 154,  
 13 previously marked, and this is a document with a  
 14 file folder tab Organization Meeting and some  
 15 handwritten notes that may be beyond my eyesight  
 16 or cryptography skills at this point.

17                  A. I'm with you.

18                  Q. Did you review a version of  
 19 Exhibit 154 in the course of your work?

20                  A. I did see this document.

21                  Q. Did you work your way through it  
 22 at the time?

23                  A. To the best of my ability.

24                  Q. Did you find any reference in it  
 25 that you thought was to gray marketing or Costco

1                   EDWARD NECARSULMER, III  
 2 believe that the underwriters had a copy of  
 3 Exhibit 228 prior to the effective date of the  
 4 offering in their due diligence files?

5                   MR. GLUCKOW: Objection to the  
 6 form.

7                   You can answer.

8                   THE WITNESS: I wouldn't know.

9                   BY MR. LEWIS:

10                  Q. Let me show you Exhibit 197, and  
 11 this is a copy of what purports to be a Customer  
 12 Due Diligence Questionnaire completed with  
 13 respect to Edwin Watts. Have you reviewed this  
 14 as part of your expert work in this case?

15                  A. Yes, it was in the material that  
 16 I was provided.

17                  Q. If you had been conducted --  
 18 strike that.

19                  Do you have any reason to believe  
 20 that Mr. Watts was asked any specific questions  
 21 about Costco in the course of his interview,  
 22 which was, according to this date, on April 21,  
 23 1998?

24                  MR. GLUCKOW: The document speaks  
 25 for itself.

1                   EDWARD NECARSULMER, III  
 2 distribution?

3                   MR. GLUCKOW: Object to the  
 4 extent the document speaks for itself.

5                   You can answer.

6                   THE WITNESS: No.

7                   BY MR. LEWIS:

8                  Q. Let me show you what has been  
 9 marked as Exhibit 228. Did you review Exhibit  
 10 228 in the course of your work?

11                  A. I've seen this article before,  
 12 so the answer is yes.

13                  Q. If you just look at the last  
 14 page of the document, you'll see there's a  
 15 reference to Edwin Watts and some commentary  
 16 about various subjects. Did you read that  
 17 paragraph?

18                  MR. GLUCKOW: Take your time and  
 19 make sure you read it before you  
 20 answer.

21                  (Witness reviewing document.)

22                  THE WITNESS: I don't recall  
 23 reading that paragraph.

24                  BY MR. LEWIS:

25                  Q. Okay. Do you have any reason to

1                   EDWARD NECARSULMER, III  
 2 You can answer.

3                   THE WITNESS: I have no knowledge  
 4 of that question or response to it.

5                   BY MR. LEWIS:

6                  Q. And you have no knowledge of  
 7 there being questions asked that are not  
 8 contained or commented on in this document  
 9 itself?

10                  A. I could respond that it would be  
 11 unusual that the conversation would just --  
 12 would you mind answering the following nine  
 13 questions; but I certainly couldn't support  
 14 that, I mean, cite any evidence of that.

15                  Q. Why do you say it would be  
 16 unusual?

17                  A. Well, the purpose of these type  
 18 of exercises is to engage the person you are  
 19 talking to in some sort of a dialog about the  
 20 company you are checking on. Sometimes they are  
 21 expansive; sometimes they are not. Usually the  
 22 questionnaire is, you know, an outline, a way to  
 23 memorialize the conversation, but, hopefully,  
 24 it's -- you know, there's some dialog, but I  
 25 don't know because I haven't seen it, and I have

<p>1                   EDWARD NECARSULMER, III  2 no evidence to prove or no documentation to  3 prove that that's what took place.  4                   Q. In your experience, is it  5 customary for notes to be taken during customer  6 questionnaires?  7                   A. Customary, yes.  8                   Q. Are you aware of any customary  9 practices in the industry with respect to the  10 disposition of drafts and notes that were made  11 prior to an IPO?  12                   MR. GLUCKOW: Objection to the  13 form. I also object to the extent it's  14 overbroad.  15                   Do you mean at any point in his  16 career? Are you talking about a  17 specific time frame?  18 BY MR. LEWIS:  19                   Q. Let's talk about the period  20 since 1998, do you believe that it is customary  21 in the industry for underwriters to dispose of  22 notes that they made during the due diligence  23 process?  24                   MR. GLUCKOW: The same  25 objections.</p>	<p>Page 134</p> <p>1                   EDWARD NECARSULMER, III  2 Wasserstein Perella Securities and Dresdner  3 Kleinwort Wasserstein. Did either of those  4 firms have a practice of disposing of notes of  5 due diligence after an IPO?  6                   A. Not a specific policy, no.  7                   Q. Let me start with a broad  8 question, and if I need to, I'll go to more  9 specific ones.  10                   We've talked several times about  11 the Customer Due Diligence Questionnaires. Did  12 you find reference to either gray marketing or  13 Costco distribution appearing in any of the  14 customer due diligence questionnaires?  15                   A. I don't believe I did.  16                   Q. Would you like to see them now  17 to check your answer, or --  18                   MR. GLUCKOW: The documents speak  19 for themselves.  20                   THE WITNESS: I don't think I  21 need to check my answer.  22 BY MR. LEWIS:  23                   Q. Okay.  24                   A. I'm not necessarily ready for a  25 memory test, but I believe that's the case; I'm</p>
<p>Page 135</p> <p>1                   EDWARD NECARSULMER, III  2 Go ahead.  3                   THE WITNESS: I wouldn't say  4 specific to due diligence process.  5 There certainly was a movement among  6 all of our client -- compliance  7 departments to be much more cognizant  8 of what we kept and didn't keep and at  9 what point, you know, like how long you  10 have to keep your tax-return-type  11 standards. So I think people were more  12 careful to keep what they were supposed  13 to keep and more careful to keep -- not  14 to keep what didn't need to be kept.  15 BY MR. LEWIS:  16                   Q. And when did that begin?  17                   A. I couldn't give you a specific  18 date, but it was an evolving thing throughout --  19 certainly throughout the '90s, it would be a  20 more evolving practice.  21                   Q. So that by 1998 your people were  22 more careful to do what you said --  23                   A. Yes.  24                   Q. -- in your last answer?  25                   Since 1998 you worked both at</p>	<p>Page 135</p> <p>1                   EDWARD NECARSULMER, III  2 confident that that's the case.  3                   Q. Okay. In Paragraph 5 on Page 3  4 of your expert report, Exhibit 321 --  5                   A. I'm sorry, Paragraph...?  6                   Q. 5.  7                   A. Which is on Page 3. Okay.  8                   Q. "The underwriters prepared lists  9 of potential investor questions," dash, "in my  10 experience this was always an effective  11 mechanism for raising and responding to relevant  12 issues."  13                   When you wrote that, were you  14 referring to Exhibit 210?  15                   A. That's correct.  16                   Q. Were there any other lists of  17 investor questions that you were referring to in  18 Paragraph 5 of your opinion?  19                   A. This is what I was referring  20 to.  21                   Q. Do you know when this was  22 prepared, "this" being Exhibit 210?  23                   A. I don't know the specific date.  24 I know where in the process, which was prior to  25 the company going on the road to seek potential</p>

<p>1                   EDWARD NECARSULMER, III  2 investors.  3           Q. Sometime by June of 1998?  4           A. By June, I don't -- we can look  5 at the road show schedule and have an exact  6 date, but I don't recall it.  7           Q. Would you agree with me that  8 nothing in Exhibit 210 refers either to gray  9 marketing or to Costco?  10          MR. GLUCKOW: The document speaks  11 for itself.  12          You can answer.  13          THE WITNESS: That's correct.  14 BY MR. LEWIS:  15          Q. It is correct that there's no  16 reference?  17          A. It is correct that there's no  18 reference.  19          Q. Let me show you what has been  20 marked as Exhibit 204, a memo to the file from  21 Joe Hoffman, dated June 25, 1998. Do you recall  22 this document?  23          A. I do.  24          Q. Do you have any understanding of  25 how this document came to be in the</p>	<p>1                   EDWARD NECARSULMER, III  2 prior to pricing, street practice is to have a  3 so-called bringdown due diligence call where you  4 just make sure there are no -- you try to ensure  5 there are no issues -- I don't know if the word  6 is material, but no significant change between  7 what you know and as you go to become effective  8 the next morning. And this looks to me --  9 appears to be the notes from that type of  10 meeting.  11          Q. Now, at the companies that  12 you've worked at, is bringdown due diligence  13 recorded more formally than by a set of notes?  14          MR. GLUCKOW: Objection to the  15 form.  16          You can answer.  17          THE WITNESS: No. I mean, I  18 guess I would have assumed maybe the  19 notes were typed up, but basically this  20 is the form I'd be used to.  21          It is often pro forma, if that's  22 the -- you know. Unless there's some  23 significant issue that comes up. In  24 many cases, you know, people are on the  25 road at different places; often the</p>
<p>1                   EDWARD NECARSULMER, III  2 underwriters' files as reflected by the page  3 number in the bottom right-hand corner?  4          A. As a matter of practice, if  5 there is dialog usually between the assigned  6 examiner of the commission and usually issuer's  7 counsel, they'll provide the underwriters a copy  8 of any information that comes of that source.  9          Q. From your review of documents  10 and testimony, are you aware of any dialog  11 between Adams and the underwriters with respect  12 to this exhibit?  13          A. I'm not.  14          Q. Are you aware of any  15 communications between the underwriters and the  16 SEC related to this exhibit, based on your  17 review of the transcripts and exhibits?  18          A. I don't recall any.  19          Q. I would next like to show you  20 what has been marked as Exhibit 159, and this is  21 a two-page exhibit, the first page of which is  22 entitled Additional Due Diligence Material.  23          Do you have any understanding of  24 what this exhibit is?  25          A. I believe right before -- really</p>	<p>1                   EDWARD NECARSULMER, III  2 management -- you know, the CFO is in  3 San Francisco, the CEO is in London  4 making presentations and sometimes they  5 are not even on the call, and it's  6 usually just an update of where you are  7 in terms of the effectiveness, has it  8 gotten NASD approval, that kind of  9 stuff. So this doesn't surprise me,  10 no.  11 BY MR. LEWIS:  12          Q. Do you have any understanding as  13 to whose notes these are?  14          A. I could guess, but I don't know.  15          Q. As a general proposition, as you  16 were doing your work looking at documents and  17 transcripts, if you had a question about the  18 documents, did you from time to time consult  19 with Simpson Thacher about the significance of a  20 document or the author of a document?  21          A. I don't believe we ever had -- I  22 mean, we were certainly in touch talking about  23 my progress and where -- you know, but I don't  24 -- it didn't really arise. I mean, the answer  25 is no, it really did not -- it didn't come up.</p>

<p style="text-align: right;">Page 142</p> <p>1                   EDWARD NECARSULMER, III  2       Q. Okay. Is it your understanding  3       that these are notes of a telephone conversation  4       rather than that of a meeting?  5       A. That would be my surmise, but  6       it's only that.  7       Q. And what is that based on?  8       A. Based on the way it's almost  9       always a so-called bringdown call because the  10      people are not usually in the same place.  11      Q. Is there, in your experience, a  12      standard format for a bringdown call?  13      A. No. In my experience, it's  14      quite informal; it's tick off three or four  15      points, anything we ought to be aware of. It  16      can be combined with an update of where you are  17      in terms of effectiveness, other forms need to  18      be filed. So generally it kind of takes this  19      form.  20      Q. Did you see anything in this  21      document when you reviewed it that you believe  22      referred either to Costco or to gray marketing  23      more broadly?  24      MR. GLUCKOW: The document speaks  25      for itself.</p>	<p style="text-align: right;">Page 144</p> <p>1                   EDWARD NECARSULMER, III  2       that there's nothing that I'm not  3       seeing. Correct?  4       BY MR. LEWIS:  5       Q. I think your assumption is  6       absolutely correct.  7       A. With that assumption, the answer  8       is there's nothing referring to either of those  9       subjects.  10      (Whereupon, documents were  11      marked, for identification purposes, as  12      Exhibit 325 and Exhibit 326.)  13      BY MR. LEWIS:  14      Q. I'm going to hand you two  15      exhibits together, 325 and 326.  16      MR. LEWIS: Off the record.  17      (A discussion was held off the  18      record.)  19      BY MR. LEWIS:  20      Q. 325 is a copy of documents that  21      you referred to in your rebuttal report and some  22      of those pages -- there were a few pages not  23      included because some of the Adams advertising  24      materials were double-sided and someone, not  25      doing their due diligence in the copying</p>
<p style="text-align: right;">Page 143</p> <p>1                   EDWARD NECARSULMER, III  2       But you can answer.  3       THE WITNESS: No.  4       BY MR. LEWIS:  5       Q. I previously showed you Exhibit  6       160 which was the July 14, 1998, summary of due  7       diligence conducted by the Lehman Brothers Adams  8       Golf team.  9       Did you see anything in Exhibit  10      198 which referred to either gray marketing or  11      Costco distribution?  12      MR. GLUCKOW: You said 198.  13      BY MR. LEWIS:  14      Q. I'm sorry; that was the one that  15      has been variously numbered as 160 and 198.  16      So the question is, since you  17      have 160 in front of you, whether you saw  18      anything in the summary of due diligence  19      contained in Exhibit 160 that you believe  20      referred to either Costco or gray marketing  21      issues?  22      MR. GLUCKOW: The document speaks  23      for itself.  24      But you can answer it.  25      THE WITNESS: I'm assuming Page 3</p>	<p style="text-align: right;">Page 145</p> <p>1                   EDWARD NECARSULMER, III  2       process, left those pages out when the document  3       was compiled, so those missing pages are  4       contained in Exhibit 326.  5       You'll see that the documents  6       that are compiled in this exhibit include due  7       diligence questionnaires, sales data,  8       advertising data, and, to the best of my  9       knowledge, these are all the pages that you  10      referred to in your rebuttal report.  11      MR. GLUCKOW: Just to be clear,  12      we haven't obviously checked to make  13      sure this is the case, but what you are  14      saying is when you combine 325 and 326,  15      all of the documents cited in the  16      rebuttal report should be included in  17      325 and 326.  18      MR. LEWIS: They should be. And  19      the ones in 326 are all  20      advertising-type documents which go  21      sort of into the span of documents in  22      the middle that have Adams Tight Lies  23      advertisements and humorous items about  24      Barney and a press release here and  25      there.</p>

<p style="text-align: right;">Page 146</p> <p>1                   EDWARD NECARSULMER, III    2 BY MR. LEWIS:    3           Q. At the risk of beating the horse    4 dead, again, to your knowledge, is there    5 anyplace in any of the pages referred to in your    6 rebuttal report which touched on gray marketing    7 or Costco distribution?    8           MR. GLUCKOW: And again, you are    9 focused on the UND production which we    10 have in front of us and 325 and 326,    11 not on deposition testimony?    12           MR. LEWIS: That is correct.    13           THE WITNESS: Then I would say --    14 I was thinking aloud; excuse me. Let    15 me just make sure.    16           To the best of my knowledge, that    17 is correct.    18 BY MR. LEWIS:    19           Q. Moving forward chronologically,    20 I will show you Exhibit 215 which is a Lehman    21 Brothers memorandum, facsimile, suggested    22 outline, and list of concerns. The transmittal    23 date on the fax is July 29, 1998.    24           Did you review this document?    25           A. I did see this document.</p>	<p style="text-align: right;">Page 148</p> <p>1                   EDWARD NECARSULMER, III    2 determine how the information came into Lehman's    3 possession that caused someone to write the    4 words that appear on the page I read to you?    5           MR. GLUCKOW: Objection to the    6 form. It mischaracterizes the    7 testimony.    8           But you can answer.    9           THE WITNESS: I would add that,    10 you know, since this is post IPO, it's    11 highly plausible that's -- that this    12 came through an investor or type of    13 question to the research analyst.    14 BY MR. LEWIS:    15           Q. Can you explain why you say    16 that?    17           A. Well, what happens often is that    18 as you are talking about the story or the stock,    19 particularly if the stock is, you know, either    20 going up or down a lot and therefore is the    21 subject, research analysts are constantly    22 talking to their customers who are the --    23 they're counterpart analysts or portfolio    24 managers at usually large financial    25 institutions, or it could be an officer manager</p>
<p style="text-align: right;">Page 147</p> <p>1                   EDWARD NECARSULMER, III    2           Q. And did you see, on the third    3 page of the exhibit, the item "Discounting -    4 Tight Lies have been seen in many Costcos for    5 \$146? How is product getting there? What is    6 Adams Golf doing about it?"    7           A. I have seen that.    8           Q. Have you seen any documents that    9 explain to you how that information came into    10 the possession of the underwriters?    11           A. I had not seen a document    12 documentary of it, no.    13           Q. Do you recall any testimonial    14 evidence?    15           A. It is my recollection that    16 either Picchi or Lantier, who were the two    17 Lehman equity research analysts, did refer to    18 this in their deposition testimony. I can't    19 tell you which one. I would say Lantier, if I    20 had to make a determination.    21           L-A-N-T-I-E-R. P-I-C-C-I, I    22 think. It may be P-I-C-C-H-I.    23           Q. So that other than the    24 deposition transcripts of the equity analysts,    25 you are unaware of any means by which one could</p>	<p style="text-align: right;">Page 149</p> <p>1                   EDWARD NECARSULMER, III    2 someplace, and a lot of the process is feedback,    3 and somebody said, you know, what do you think    4 is going on? I heard, you know, from my golf    5 pro or a guy at Fidelity asked me about... I    6 mean, in my experience a lot of the information    7 is actually incoming, so it could very well have    8 come through that way as well.    9           Q. Let me show you what I've marked    10 previously as 217. This is a teleconference    11 script dated August 5, 1998, sent to Olga    12 Pulido-Crowe and Pat Walravens,    13 W-A-L-R-A-V-E-N-S, from the desk of Patty    14 Walsh. And at Page 40671, you will see a    15 reference, under the heading of Discounting, to    16 "Tight Lies have been seen in many Costcos for    17 \$146. How is the product getting there?" and an    18 answer is given.    19           Does anything in this document --    20 strike that.    21           Do you have any reason to    22 believe that the information that's contained    23 on Page 40670, which is similar to the    24 information we saw in the "concerns" box on    25 Exhibit 215, came as a surprise to the</p>

<p style="text-align: right;">Page 150</p> <p>1                   EDWARD NECARSULMER, III 2 underwriters?</p> <p>3                   MR. GLUCKOW: Objection to the 4 form. Just to clean up the record, I 5 think you said 40670. I'm assuming you 6 must have meant 40671.</p> <p>7                   MR. LEWIS: I tried to say 8 40671. I probably sputtered it.</p> <p>9                   MR. GLUCKOW: And then you are 10 comparing the language at the bottom of 11 40671 with the language in 215?</p> <p>12                  MR. LEWIS: Correct.</p> <p>13                  MR. GLUCKOW: And what's the 14 question?</p> <p>15 BY MR. LEWIS: 16                  Q. Looking at those two documents 17 together, do you recall -- strike that. 18                  Seeing those two documents 19 together, do you have any recollection of any 20 explanation that you learned during your 21 investigation in this case of how the 22 underwriters came to learn of gray marketing 23 distribution through Costco after the IPO?</p> <p>24                  MR. GLUCKOW: Vague and 25 ambiguous.</p>	<p style="text-align: right;">Page 152</p> <p>1                   EDWARD NECARSULMER, III 2 THE WITNESS: Absolutely not. 3                  There's no reference that that happened 4 in any of the material that I reviewed. 5 BY MR. LEWIS: 6                  Q. Do you recall Mr. Lantier being 7 unable to date precisely when his pro shop 8 survey calls were made? 9                  MR. GLUCKOW: Objection. The 10 deposition record speaks for itself. 11                  You can answer. 12                  THE WITNESS: I do recall that in 13 the deposition. 14 BY MR. LEWIS: 15                  Q. Would it be fair to say that to 16 the best of your recollection Mr. Lantier 17 couldn't speak to that subject one way or the 18 other? 19                  MR. GLUCKOW: The same objection. 20                  You can answer. 21                  THE WITNESS: I don't have an 22 appropriate response. I don't know. 23                  MR. LEWIS: Off the record. 24                  (A discussion was held off the 25 record.)</p>
<p style="text-align: right;">Page 151</p> <p>1                   EDWARD NECARSULMER, III 2 But you can answer. 3                  Asked and answered as well. 4                  Go ahead. 5                  THE WITNESS: Again, I can only 6 surmise that it came through investor 7 feedback or through the surveys that 8 the equity research analyst did.</p> <p>9 BY MR. LEWIS: 10                 Q. You referred earlier to the 11 surveys. I'll place before you a copy of 12 Exhibit 180, previously marked, and specifically 13 I'll direct your attention to Page 27. 14                 Is the survey that appears on 15 that page the survey you are referring to in 16 your testimony? 17                 A. Yes. 18                 Q. And do you have any reason to 19 believe that Lehman learned of Costco 20 distribution or gray market distribution through 21 the pro shop survey before the IPO date? 22                 MR. GLUCKOW: Objection to the 23 form. Vague and ambiguous. Asked and 24 answered. 25                 You can answer.</p>	<p style="text-align: right;">Page 153</p> <p>1                   EDWARD NECARSULMER, III 2 (Whereupon, a document was 3 marked, for identification purposes, as 4 Exhibit 327.) 5 BY MR. LEWIS: 6                 Q. I've marked as Exhibit 327 a 7 document with the heading Exhibit VII. Do you 8 recognize this document? 9                 A. I've seen the document. 10                Q. And where have you seen it? 11                A. It was within the underwriter 12 production, I believe. It was within the 13 documents that I referred to in Schedule B. 14                Q. Of your -- 15                A. Of 321. 16                Q. Well, to be fair to you, sir, 17 this was an exhibit to the expert report of 18 Mr. Grace. 19                A. Okay. I accept that as a fact. 20 As I said in my rebuttal report, I did review 21 that report as well, I just don't remember. 22                Q. Did you review this -- did you 23 review the entirety of Mr. Grace's report in 24 preparation of your rebuttal report? 25                A. "Preparation" is not the right</p>

<p style="text-align: right;">Page 154</p> <p>1                   EDWARD NECARSULMER, III  2 word. I read it as something related to the  3 case, related to what I -- you know, to what my  4 role was as well.</p> <p>5                   MR. GLUCKOW: But in terms of the  6 entirety, just to be clear, as the  7 attachment to the rebuttal report  8 indicates, we sent Mr. Necarsulmer  9 copies of all the expert reports  10 including the exhibits so this  11 (indicating) would have been included  12 in what we sent Mr. Necarsulmer.</p> <p>13                   MR. LEWIS: Right; but he  14 wouldn't have seen it before it was  15 issued.</p> <p>16                   MR. GLUCKOW: Correct.</p> <p>17                   MR. LEWIS: And this was in the  18 -- oh.</p> <p>19                   MR. GLUCKOW: I'm saying in the  20 rebuttal report.</p> <p>21                   THE WITNESS: Right. That's why  22 I said in Exhibit B to my rebuttal  23 report. Or Exhibit A, I guess it is,  24 in my rebuttal report.</p> <p>25                   BY MR. LEWIS:</p>	<p style="text-align: right;">Page 156</p> <p>1                   EDWARD NECARSULMER, III  2 were listed by Mr. Grace in this report?</p> <p>3                   MR. GLUCKOW: You mean had he  4 seen reference to them in the materials  5 in Exhibit A -- or Exhibit B, rather,  6 to his report which included all the  7 depositions and the exhibits to the  8 depositions, or has he seen them in  9 this format (indicating)? I'm not sure  10 what the question is.</p> <p>11                   BY MR. LEWIS:</p> <p>12                   Q. Let me try a simple question.</p> <p>13                   MR. LEWIS: Off the record.</p> <p>14                   (A discussion was held off the  15 record.)</p> <p>16                   BY MR. LEWIS:</p> <p>17                   Q. Let me take you to Page 2 of  18 this -- of this report. You'll see that under  19 the date of May 6, 1998, according to this  20 table, Pro Golf Discount in Fairfax, Virginia,  21 canceled an order because Adams' clubs are in  22 Costco.</p> <p>23                   Do you recall seeing a reference  24 to that in any of the depositions or exhibits  25 that you had read in your work?</p>
<p style="text-align: right;">Page 155</p> <p>1                   EDWARD NECARSULMER, III  2                   Q. Did you read through this?  3                   A. I did look through this.  4                   Q. Did you specifically look at the  5 first six pages of this?</p> <p>6                   MR. GLUCKOW: Objection to the  7 form. He said he's read the entire  8 document, but -- you can answer.</p> <p>9                   BY MR. LEWIS:  10                   Q. Well, when you read the entire  11 document, did you have any reason in your own  12 mind to focus on the first six pages of this?  13                   A. I had no particular reason to do  14 that, no.</p> <p>15                   Q. Did you read through the  16 complaints to Adams Golf regarding Costco that  17 are listed in the chronological order that  18 Mr. Grace listed them in this report?  19                   A. I did.</p> <p>20                   Q. And the solutions purportedly  21 implemented by Adams Golf as also listed on  22 this?</p> <p>23                   A. Correct.</p> <p>24                   Q. Had you previously seen the  25 complaints, the Adams numbered complaints, that</p>	<p style="text-align: right;">Page 157</p> <p>1                   EDWARD NECARSULMER, III  2                   A. I don't.  3                   Q. On May 7, 1998, according to  4 Mr. Grace, Adams Golf clubs were found in Costco  5 in Modesto, California.  6                   Do you recall having seen a  7 reference to that in your work?  8                   A. I can't recall.  9                   Q. May 21, according to Mr. Grace,  10 Pro Golf complains that Costco is selling Adams  11 Golf product.  12                   Do you recall having learned of  13 that in your investigation?  14                   A. I don't recall that either.  15                   Q. On May 29, 1998, according to  16 the table, "WDC Mackenzie reports that a new  17 shipment of Adams Golf clubs have hit Canadian  18 Costcos."  19                   Do you remember seeing  20 reference to that in the --  21                   A. I do remember seeing that in the  22 correspondence between the two.  23                   Q. June 1, 1998, according to  24 Mr. Grace, "Centerville Golf in Centerville,  25 Virginia, complained about Adams clubs in</p>

<p style="text-align: right;">Page 158</p> <p>1                   EDWARD NECARSULMER, III  2 Costco."</p> <p>3                   Do you recall having learned that  4 in your work in the case prior to seeing  5 Dr. Grace's -- Mr. Grace's report?</p> <p>6                   A. I don't recall that  7 specifically, no.</p> <p>8                   Q. All right. How about the item  9 for June 8, 1998; Merrifield Golf in Fairfax,  10 Virginia, called regarding Adams clubs seen at  11 Costco."</p> <p>12                  Do you recall learning that?</p> <p>13                  A. I don't recall learning that.</p> <p>14                  Q. June 11, 1998, Jack Tone,  15 T-O-N-E, Golf in Ripon, R-I-P-O-N, California,  16 called regarding Adams' clubs in Costco.</p> <p>17                  Do you remember seeing that?</p> <p>18                  A. I don't.</p> <p>19                  Q. June 24, Green River Golf Club  20 in Corona, California, called to complain about  21 clubs in Costco. Do you recall learning that?</p> <p>22                  A. I don't recall learning that  23 either.</p> <p>24                  Q. June 25, two items, "Pro Golf  25 Discount in Boise, Idaho, called regarding their</p>	<p style="text-align: right;">Page 160</p> <p>1                   EDWARD NECARSULMER, III  2 supplied to Ms. Pulido-Crowe?</p> <p>3                   MR. GLUCKOW: Objection to the  4 form. It mischaracterizes the record.  5 It mischaracterizes the testimony.</p> <p>6                   You can answer.</p> <p>7                   THE WITNESS: If I recall from  8 Pulido-Crowe's deposition, the -- his  9 characterization of the problem was  10 that there was some problem with  11 Costco, they didn't believe it was  12 significant, and they were handling  13 it. I mean, that was my summary of  14 what I believe was said. And I don't  15 know that this is enough to tell me  16 that that's different, but it is a  17 little vague, my memory of same.</p> <p>18                  BY MR. LEWIS:</p> <p>19                  Q. I'll show you this in a second.  20 At Page 47 of her deposition Ms. Pulido-Crowe  21 was asked the question: "How did you determine  22 whether the gray marketing was material or not?"  23                  "Answer: We of course first  24 spoke to the company, talked about the  25 distribution channels. The issue of -- the</p>
<p style="text-align: right;">Page 159</p> <p>1                   EDWARD NECARSULMER, III  2 problem selling clubs due to Costco," and  3 "Centerville Golf Center in Centerville,  4 Virginia, called to complain again about  5 Costco."</p> <p>6                  A. I do recall -- I do recall the  7 one in Idaho. I don't recall the other one in  8 California.</p> <p>9                  Q. Just a couple more.</p> <p>10                 A. Fine.</p> <p>11                 Q. June 29, Tierneys,  12 T-I-E-R-N-E-Y-S, Golf in Walnut Creek,  13 California, called regarding a customer  14 returning clubs after seeing Adams Golf clubs in  15 Costco.</p> <p>16                 A. I do recall seeing that.</p> <p>17                 Q. July 3, '98, "Customer requests  18 Adams Golf hat offer after buying clubs at a  19 Costco in Livonia, Michigan."</p> <p>20                 A. I don't recall that.</p> <p>21                 Q. Would you agree that the  22 portions of the summary that we've just gone  23 over contain information that was different with  24 respect to gray marketing and Costco than the  25 information that Mr. Adams had originally</p>	<p style="text-align: right;">Page 161</p> <p>1                   EDWARD NECARSULMER, III  2 discussion of Costco came up because of discount  3 warehouses. And we asked, was it much of a  4 problem? They said no, there was -- it was an  5 isolated incident -- I recall something to that  6 effect. My interpretation was it was an  7 isolated incident and that that person or  8 distributor, whoever it was that got those clubs  9 there, they were going to pursue that and put an  10 end to that."</p> <p>11                 MR. GLUCKOW: Are you  12 representing to the witness that that  13 is the only time that Ms. Pulido-Crowe  14 testified about her discussions with  15 the company concerning Costco and/or  16 gray marketing?</p> <p>17                 I certainly hope not.</p> <p>18                 MR. LEWIS: I'm not saying it's  19 the only time, but I'm not saying --</p> <p>20                 MR. GLUCKOW: The inference of  21 your question is that that is the  22 record as to the conversations.</p> <p>23                 MR. LEWIS: I haven't asked a  24 question, so I can't have an inference  25 to my question.</p>

1 EDWARD NECARSULMER, III  
2 BY MR. LEWIS:

3 Q. My question is --

4 MR. GLUCKOW: I suggest  
5 otherwise, but proceed.

6 MR. LEWIS: You suggest I have a  
7 question out there?

8 MR. GLUCKOW: No. I suggest that  
9 the way you just read that into the  
10 record following the exchange that we  
11 have had is misleading. But proceed.

12 BY MR. LEWIS:

13 Q. The first question is, was that  
14 the testimony of Ms. Pulido-Crowe that you were  
15 referring to?

16 A. Partially.

17 Q. Okay. Is there something else  
18 that you recall?

19 You have the volume in front of  
20 you and an index to it, if there's something  
21 else you would like to refer my attention to.

22 Do you recall her ever telling --  
23 strike that.

24 Do you recall her ever saying  
25 that Barney Adams told her that Costco

1 EDWARD NECARSULMER, III  
2 know, one event. If they were coming  
3 from multiple sources, I think it  
4 wouldn't be.

5 BY MR. LEWIS:

6 Q. All right. Do you have any  
7 reason to believe based on your investigation in  
8 this case as part of your expert work -- let me  
9 reframe that.

10 Do you have any reason to believe  
11 based on your work in this case that the  
12 underwriters reviewed the complaints that were  
13 listed between the dates of May 6th and I guess  
14 I stopped reading at July 3?

15 MR. GLUCKOW: Objection to the  
16 form.

17 You can answer.

18 THE WITNESS: I know that they  
19 certainly -- I shouldn't say  
20 certainly. I believe they knew about  
21 the Canadian one. And I don't know to  
22 the extent they knew about the others.

23 BY MR. LEWIS:

24 Q. Forgive me if I'm asking you  
25 something I've already asked you. Did I read

1 EDWARD NECARSULMER, III  
2 distribution was other than an isolated  
3 incident?

4 MR. GLUCKOW: Objection to the  
5 form.

6 THE WITNESS: I don't recall him  
7 saying -- her saying anything besides  
8 that, no.

9 BY MR. LEWIS:

10 Q. Okay. Would you agree that the  
11 chart to Mr. Grace's report reflects that by the  
12 time of the IPO, Costco distribution, whatever  
13 it was, was not an isolated incident?

14 MR. GLUCKOW: It mischaracterizes  
15 the record. It mischaracterizes the  
16 testimony.

17 You can answer.

18 THE WITNESS: I mean, I just  
19 don't know --

20 MR. GLUCKOW: Asked and answered  
21 as well.

22 THE WITNESS: -- I just don't  
23 know. If these were all coming from  
24 the same source, then I suspect you  
25 could characterize it as one -- you

1 EDWARD NECARSULMER, III  
2 you the entry for July 8, 1998: "Golfdom in  
3 McLean, Virginia, called regarding a credit for  
4 clubs they had purchased at Costco"?

5 MR. GLUCKOW: The question is did  
6 you already ask him about that one?

7 MR. LEWIS: Right.

8 MR. GLUCKOW: The record will  
9 speak for itself, but...

10 THE WITNESS: I don't know; I  
11 just don't.

12 BY MR. LEWIS:

13 Q. Whether or not I read it to you  
14 before, the entry here in Mr. Grace's report for  
15 July 8, 1998, states that Golfdom in McLean,  
16 Virginia, called regarding a credit for clubs  
17 they had purchased at Costco.

18 Do you remember learning of that  
19 prior to -- as a result of your work in this  
20 case prior to the receipt of Dr. Grace's or  
21 Mr. Grace's report?

22 MR. GLUCKOW: He's on Page 6.

23 THE WITNESS: I'll get to Page  
24 6. I'm sorry, I went back to the  
25 beginning.

<p>1                   EDWARD NECARSULMER, III  2                   MR. LEWIS: Take your time.  3                   MR. GLUCKOW: This one  4                   (indicating).  5                   A. I don't -- I don't recall this  6                   specific one.  7                   Q. Okay. Based on your work in  8                   this case, do you know of any reason why the  9                   complaints -- the written complaints that are  10                   listed by Mr. Grace in his report would not have  11                   been available to the underwriters as part of  12                   their due diligence investigation if they had  13                   asked to see them?  14                   MR. GLUCKOW: Objection to the  15                   form. It assumes facts not in  16                   evidence.  17                   You can answer.  18                   THE WITNESS: I don't know why it  19                   wouldn't have been available had they  20                   asked to see them.  21                   BY MR. LEWIS:  22                   Q. You don't know why it wouldn't  23                   have been?  24                   A. Correct.  25                   Q. Do you have any knowledge, as</p>	<p>1                   EDWARD NECARSULMER, III  2                   err on the side of inclusion of fact rather than  3                   exclusion of fact?  4                   MR. GLUCKOW: Objection to the  5                   characterization of the report.  6                   But you can answer.  7                   THE WITNESS: I'm not sure that's  8                   accurate. I think it's important to  9                   have a complete document, but I think  10                   part of making it a useful document,  11                   and for the benefit of the investors,  12                   is making sure that the -- the things  13                   that are -- the things that are  14                   included are, you know, significant to  15                   the company, and I think one of the --  16                   having gone through this drafting  17                   process a million times, one of the  18                   great problems is what do you put in,  19                   what do you put out, what do you leave  20                   out, and it does start -- you know, can  21                   strike likely debate, and I think  22                   striking some balance is really the  23                   goal.  24                   BY MR. LEWIS:  25                   Q. Would you agree that if by the</p>
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<p>1                   EDWARD NECARSULMER, III  2                   you sit here, that the underwriters contacted,  3                   as part of the due diligence investigation, any  4                   of the retailers who made the complaints about  5                   Costco that are listed between the dates of  6                   March 23, 1998, and July 8, 1998?  7                   MR. GLUCKOW: Objection to the  8                   form. Are you asking him to compare  9                   this list of complaints with the list  10                   of customer calls that we've looked at  11                   previously?  12                   MR. LEWIS: Sure, if you want to;  13                   but none of them were on the list of  14                   customer calls, so I don't think he has  15                   to do that.  16                   BY MR. LEWIS:  17                   Q. Do you have any knowledge that  18                   any of the complaining retailers were contacted  19                   by Lehman Brothers or any of the comanagers  20                   during due diligence?  21                   A. I have no knowledge of that.  22                   Q. You have opined in your rebuttal  23                   report on the subject of the disclosure that was  24                   made in this case. Would you agree that in  25                   matters of disclosure that an underwriter should</p>	<p>1                   EDWARD NECARSULMER, III  2                   time of the IPO the underwriters were unable to  3                   make a studied assessment of the scope of the  4                   risk of gray marketing that the risk of gray  5                   marketing should have been included as a risk  6                   disclosure?  7                   MR. GLUCKOW: Objection to the  8                   form. Incomplete hypothetical.  9                   Assumes facts not in evidence.  10                   You can answer.  11                   THE WITNESS: I don't agree with  12                   that. I think, again, this is a  13                   process, you make a judgment as to  14                   those things you think are significant  15                   and relevant, and those are the things  16                   you include.  17                   BY MR. LEWIS:  18                   Q. What if you concluded by the  19                   time of the effective date that you just didn't  20                   know what the scope of gray marketing was?  21                   MR. GLUCKOW: Objection. The  22                   same objections, and it  23                   mischaracterizes the evidence.  24                   THE WITNESS: My interpretation  25                   of what I read, what I reviewed, was</p>
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1                   EDWARD NECARSULMER, III  
 2 that they did make a judgment, and  
 3 their judgment was that they did know  
 4 enough and it was not material.

5 BY MR. LEWIS:

6                   Q. When was that judgment made, to  
 7 the best of your knowledge?

8                   A. Prior to the effective date of  
 9 the registration statement. I couldn't tell  
 10 you -- I couldn't make it any more specific than  
 11 that.

12                  Q. Prior to the Costco press  
 13 release?

14                  MR. GLUCKOW: Objection to the  
 15 form. It mischaracterizes the record.  
 16 It mischaracterizes the testimony.

17                  You can answer.

18 BY MR. LEWIS:

19                  Q. When I say the Costco press  
 20 release, I mean the Adams June 9, 1998, press  
 21 release relating to Costco.

22                  A. I don't know I would make -- you  
 23 know, the assumption I make from the data that I  
 24 reviewed is that that was their conclusion.

25                  Q. But are you aware of any meeting

1                   EDWARD NECARSULMER, III  
 2 after the effective date of a registration  
 3 statement?

4                   A. I would have -- I would say yes,  
 5 but it's more usual on the date. But it could  
 6 be -- it could be shortly thereafter, not long  
 7 thereafter.

8                   Q. Are you aware of any limitation  
 9 to how long after the effective date a  
 10 prospectus can be stickered?

11                  A. I'm not aware of that, if there  
 12 is one.

13                  Q. Do you believe that's a legal  
 14 issue rather than a practice issue?

15                  MR. GLUCKOW: Objection. It  
 16 calls for a legal conclusion.

17                  But you can answer.

18                  THE WITNESS: I don't know. I  
 19 don't know.

20 BY MR. LEWIS:

21                  Q. Do you know if any consideration  
 22 was given in this case to stickering the  
 23 registration statement?

24                  A. I don't know.

25                  MR. LEWIS: Let's take a

1                   EDWARD NECARSULMER, III  
 2 or meetings at which that conclusion was  
 3 reached?

4                  A. Not specifically, no.

5                  Q. Are you familiar with the term  
 6 stickering in the context of a prospectus or  
 7 registration statement?

8                  A. I am.

9                  Q. What does that term mean to you?

10                 A. You can add information via a  
 11 label, a long label, onto the cover of a  
 12 prospectus.

13                 Q. And under what circumstances in  
 14 your opinion does one sticker a registration  
 15 statement or a prospectus?

16                 A. Some fact coming out subsequent  
 17 to the printing of that prospectus that, you  
 18 know, you deem is material. Sometimes the SEC  
 19 will ask you to sticker if something comes up.  
 20 If effectiveness gets delayed for some reason  
 21 and, you know, a quarter ends or a contract gets  
 22 canceled or something like that, they'll often  
 23 allow that as a -- or recommend that as a way to  
 24 make sure the disclosure is complete.

25                 Q. Have you seen stickering done

1                   EDWARD NECARSULMER, III  
 2 five-minute break and I may be done.  
 3 (A recess was had from 3:46 p.m.  
 4 to 4:00 p.m.; and then the proceedings  
 5 continued as follows:)

6 BY MR. LEWIS:

7                  Q. A point of clarification. When  
 8 we referred to a file memo from Joe Hoffman  
 9 relating to the SEC, I believe you used the term  
 10 signing official at the SEC?

11                 A. Examining official.

12                 Q. Examining?

13                 A. Sorry.

14                 Q. I think you actually used the  
 15 word sign at one point. Is that a synonym for  
 16 the examining official?

17                 MR. GLUCKOW: I don't recall  
 18 those words being used, but the record  
 19 will speak for itself.

20                 THE WITNESS: Should I respond?

21                 MR. GLUCKOW: Yes, if you --

22                 THE WITNESS: If I said it, I  
 23 didn't mean to say it. I meant to say  
 24 examiner.

25 BY MR. LEWIS:

Page 174	Page 176
1                   EDWARD NECARSULMER, III	1                   EDWARD NECARSULMER, III
2           Q. A point of clarification. You	2           A. With the exception of WDC
3           have reached no conclusion as a result of your	3           Mackenzie, I don't.
4           work in this case with respect to issuer	4           MR. LEWIS: I have no further
5           disclosure obligations, is that fair?	5           questions at this time.
6           A. That is fair.	6           MR. GLUCKOW: Okay.
7           Q. In Exhibit 321 --	7           I'm going to have a few
8           MR. GLUCKOW: Hold on; I've got	8           questions, but I just need five
9           the official copy here.	9           minutes, so if we can take a
10          MR. LEWIS: It's hopefully the	10          five-minute break. Is that okay?
11          last time we'll go back to it.	11          MR. LEWIS: Okay. I'll ask you
12          BY MR. LEWIS:	12          what you discussed with the witness.
13          Q. -- in your enumeration of	13          MR. GLUCKOW: No, I'm going to
14          categories of things to be considered, Item 7	14          sit right here. I'm not going
15          was: "Understanding of material outstanding	15          anywhere.
16          litigation, regulatory or environmental	16          MR. LEWIS: Okay; fine. Take
17          issues."	17          your time.
18          Is it your opinion that the	18          MR. GLUCKOW: I just need to
19          underwriters had any obligation to evaluate the	19          compare two things quickly.
20          litigation between Adams and Costco --	20          MR. LEWIS: Take your time.
21          MR. GLUCKOW: Objection to the	21          (A recess was had from 4:04 a.m.
22          form.	22          to 4:13 p.m.; and then the proceedings
23          BY MR. LEWIS:	23          continued as follows:)
24          Q. -- for materiality?	24          ---
25          A. No. Practice is that you ask --	

Page 175	Page 177
1                   EDWARD NECARSULMER, III	1                   EDWARD NECARSULMER, III
2           you know, you ask that question of your counsel,	2           (Whereupon, a document was
3           and if they give you a clean bill of health on	3           marked, for identification purposes, as
4           what you've done so far, you typically keep	4           Exhibit 328.)
5           going.	5           ---
6           Q. "Your counsel" meaning the	6           EXAMINATION
7           issuer's counsel or the underwriter's counsel?	7           ---
8           A. The underwriter's counsel.	8           BY MR. GLUCKOW:
9           Q. Going back to Exhibit 7 to	9           Q. This is a copy of the deposition
10          Mr. Grace's report, I take it that in the course	10          transcript of Olga Pulido-Crowe. Mr. Lewis
11          of your --	11          mentioned this deposition during his examination
12          MR. GLUCKOW: Hold on, let me	12          and in fact read from it but didn't mark it,
13          just get it.	13          which is why I'm marking it now.
14          THE WITNESS: Got it.	14          Mr. Necarsulmer, let me ask you,
15          BY MR. LEWIS:	15          first, do you recall reviewing
16          Q. In the course of your work on	16          Ms. Pulido-Crowe's deposition as part of your
17          this engagement, did you ever try to go through	17          work in this matter?
18          the exhibits to collect complaints related to	18          A. I do.
19          gray marketing and line them up chronologically?	19          Q. Did you rely on her testimony?
20          A. I did not.	20          A. Heavily.
21          Q. Do you have any reason to	21          Q. Why?
22          believe that the underwriters were aware of the	22          A. In my experience, the captain of
23          identities of the retailers who complained to	23          the underwriting team takes particular weight --
24          Adams about Costco's appearing -- Tight Lies	24          or deserves particular weight, I should say.
25          appearing at Costco locations?	25          Q. Let me direct your attention to

Page 178	Page 180
<p>1                   EDWARD NECARSULMER, III  2 the top of Page 48, Line 6.  3           A. The top of Page 48, Line 6.  4           Q. The question is: "Do you recall  5 who spoke with Adams Golf about this issue?"  6           And the answer is: "It would  7 have been Barney or Mark -- or I don't recall  8 exactly who, but it was a group of many people  9 that were -- that would have been present."  10          Do you recall reading that when  11 you read Ms. Pulido-Crowe's deposition  12 transcript?  13          A. Yes.  14          Q. Did you rely on that in any way?  15          A. I did.  16          Q. Why?  17          A. Because I think it was  18 demonstrative of the fact that there was an  19 ongoing process of the underwriters in the  20 company talking about this and other issues.  21          Q. And I may have misinterpreted  22 some of Mr. Lewis's questions earlier, but I  23 couldn't help get the impression from some of  24 the questions that he was asking that the  25 impression that he was leaving on me anyway was</p>	<p>1                   EDWARD NECARSULMER, III  2           MR. GLUCKOW: I'm sorry, Page 78,  3 Line 3 through Line 6.  4           BY MR. GLUCKOW:  5           Q. The question is: "Did you have  6 any discussions with anyone at Adams concerning  7 the litigation between June 9 of '98 and July 9  8 of '98?"  9           The answer is: "I believe we  10 (sic) did."  11          Line 7: "Who did you have  12 those discussions with?"  13          "Answer: I don't recall. I  14 can recall conversations. I don't remember  15 who was actually there, but I recall  16 conversations."  17          Did you review this?  18          A. I did.  19          Q. Did you rely on it?  20          MR. LEWIS: Objection to form.  21          Vague. Overbroad.  22          THE WITNESS: I did rely on it.  23          BY MR. GLUCKOW:  24          Q. Why?  25          A. Again, it was evidence of this</p>
<p>1                   EDWARD NECARSULMER, III  2 that there was only one discussion between  3 Ms. Pulido-Crowe and Mr. Adams and that that one  4 discussion happened in April or May of '98.  5           Is that impression that I had  6 in my mind consistent with your review of the  7 materials in this matter?  8          MR. LEWIS: Objection to form.  9          THE WITNESS: I --  10         MR. LEWIS: You can answer.  11         THE WITNESS: I don't know who  12 has to tell me this in this case.  13         Absolutely not. The one thing  14 that is clear to me throughout, and  15 this demonstration -- this deposition  16 is sort of important to that, is that  17 there was, as there normally should be  18 in these cases, a significant number of  19 -- amount of interaction between the  20 company's marketing people and the  21 underwriters.  22          BY MR. GLUCKOW:  23          Q. Let me turn your attention to  24 Page 78, at the top, Line 3.  25          MR. LEWIS: What is this?</p>	<p>1                   EDWARD NECARSULMER, III  2 ongoing discussion between the company and the  3 underwriters as part of the due diligence  4 process.  5           Q. Let me actually have you turn  6 back to Page 77, the prior page. I should have  7 started here; I apologize.  8           On Page 76, Exhibit 163 is marked  9 -- and then there's a question -- which is the  10 press release concerning the Costco action,  11 which Mr. Lewis asked you about, and on top of  12 Page 77, the question is: "Do you recall  13 whether you saw it," meaning this press release,  14 "prior to the IPO?"  15          And the answer is: "Yes."  16          Skipping down to Line 14, the  17 question is: "Did you discuss the litigation  18 with anyone at Adams prior to them filing  19 suit?"  20          The answer is, on Line 16: "I  21 believe it was prior, yes."  22          17. "Who did you discuss this  23 with?"  24          18. "Answer: I don't recall  25 exactly, but it would have -- it was a group</p>

1                   EDWARD NECARSULMER, III  
 2 of senior management at the company and/or our  
 3 counsel, underwriters' counsel or their  
 4 counsel. It was discussed."

5                   Do you see what I've just read  
 6 there?

7                   A. I do.

8                   Q. Did you read that as part of  
 9 your evaluation of this matter?

10                  A. I did.

11                  Q. Did you rely on what I've just  
 12 read?

13                  MR. LEWIS: Objection.

14                  THE WITNESS: I did.

15 BY MR. GLUCKOW:

16                  Q. Please explain how and why.

17                  A. I relied on it because, again, I  
 18 was -- one of the things I was trying to  
 19 investigate as part of my project was, you know,  
 20 were the underwriters thorough and consistent in  
 21 trying to discuss, you know, these -- the  
 22 marketing issues, the distribution issues, legal  
 23 issues, with the company, and this is another  
 24 evidence that they did and that they followed up  
 25 on it.

1                   EDWARD NECARSULMER, III  
 2 therefore, like many other issues, it just  
 3 wasn't part of the conversation.

4                   MR. GLUCKOW: I have no further  
 5 questions at this time.

6                   MS. MORIATY: I've got just a  
 7 few.

8                   THE WITNESS: Sure.

9                   ---

10                  EXAMINATION

11                   ---

12 BY MS. MORIATY:

13                  Q. I want to turn everybody back to  
 14 Exhibit I think it's 327 which was the exhibit  
 15 to Mr. Grace's report.

16                  MR. GLUCKOW: Here it is.

17                  THE WITNESS: Okay.

18 BY MS. MORIATY:

19                  Q. Well done, okay.

20                  During your research for your  
 21 report in this case, did you learn how many  
 22 retailers Adams Golf had in 1998?

23                  A. The number 7,000 sticks in my  
 24 mind.

25                  Q. Do you know how many phone calls

1                   EDWARD NECARSULMER, III  
 2                  Q. There are a number of documents  
 3 that Mr. Lewis showed you -- examples would be  
 4 the Lehman Brothers Commitment Committee  
 5 memorandum, Exhibit 74; the due diligence  
 6 memorandum, Exhibit 160, also marked as 198; the  
 7 notes of the bringdown diligence discussion,  
 8 Exhibit 159 -- where the questioning pointed out  
 9 that there was no reference in those documents  
 10 and other documents to gray marketing or Costco.

11                  Do you recall that line of  
 12 questioning?

13                  A. I do.

14                  Q. Did it surprise you in any way  
 15 that there was no reference to gray marketing or  
 16 Costco in those documents?

17                  MR. LEWIS: Objection. Vague and  
 18 overbroad.

19                  THE WITNESS: It didn't surprise  
 20 me at all.

21 BY MR. GLUCKOW:

22                  Q. Why?

23                  A. Because the underwriters had  
 24 made a determination that this was not  
 25 significant to the company's sales and earnings;

1                   EDWARD NECARSULMER, III  
 2 Adams Golf received to its call center in total  
 3 between about January 1st and July 8 of 1998?

4                  MR. LEWIS: Objection to form.

5                  THE WITNESS: A thousand -- I --

6 BY MS. MORIATY:

7                  Q. Did you read this information in  
 8 the course of your research for this report?

9                  A. Yes.

10                  MR. LEWIS: Objection to form.

11                  THE WITNESS: Yes, I did.

12 BY MS. MORIATY:

13                  Q. I'm going to represent to you  
 14 that -- you just told me it was 7,000  
 15 retailers.

16                  A. Right.

17                  Q. I'm going to represent to you  
 18 that they had 12,885 calls to this call center.  
 19 You can believe that or not. Based on whatever  
 20 impression you had during your research, based  
 21 on that.

22                  So I'm going to look at Exhibit  
 23 327. And we discussed earlier the complaints  
 24 to Adams Golf regarding the Costco column, and  
 25 in this column by my count there are 12

<p>1                   EDWARD NECARSULMER, III  2   retailers complaining between the beginning of  3   this chart and the IPO -- the beginning of  4   this chart starts February 16th, '98; and  5   there are nine calls that come into the call  6   center.</p> <p>7                   So with all of your experience  8   working as an underwriter in various IPOs, and  9   in light of the information in Exhibit 327 and  10   the number of retailers -- 7,000 -- and calls  11   to the call center -- upwards of 12,000 -- do  12   you think gray marketing should have been  13   listed as a risk factor in the Adams Golf  14   prospectus?</p> <p>15                  MR. LEWIS: Objection to form and  16   foundation.</p> <p>17                  MR. GLUCKOW: I'll just --</p> <p>18                  MR. LEWIS: Beyond the scope of  19   his purpose in this litigation  20   according to his testimony.</p> <p>21                  THE WITNESS: Should I answer?</p> <p>22                  MR. LEWIS: You may answer, if  23   you can.</p> <p>24                  THE WITNESS: I mean, it seems to  25   me, again, as I just answered</p>	<p>1                   EDWARD NECARSULMER, III  2   I think it would not be a significant  3   issue.</p> <p>4                  BY MS. MORIATY:  5                  Q. And if you heard that nine calls  6   out of more than 12,000 were regarding a certain  7   issue, would you have thought that issue  8   significant enough to investigate further or put  9   as a risk factor?</p> <p>10                 MR. LEWIS: Objection to form and  11   foundation.</p> <p>12                 THE WITNESS: It's hard to, you  13   know -- no, the answer is no, the  14   numbers are simply too small, putting  15   myself in that spot.</p> <p>16                 MS. MORIATY: Thanks. No further  17   questions here.</p> <p>18                 ---</p> <p>19                 EXAMINATION</p> <p>20                 ---</p> <p>21                 BY MR. LEWIS:  22                 Q. Mr. Necarsulmer, can you say  23   that as someone who is overseeing due diligence  24   investigations in the past if you had  25   Mr. Grace's report before you at the time of the</p>
<p>1                   EDWARD NECARSULMER, III  2   Mr. Gluckow, they made a determination  3   that while they knew of the issue, that  4   it simply wasn't -- didn't rise to the  5   level of, and I would rather use the  6   word significant than material because  7   I think material actually has a legal  8   connotation, also. So, therefore, like  9   many other issues, they made the  10   determination, the underwriters made  11   the determination, that there was no  12   benefit, no reason, you know, to take  13   it any further. And that's a judgment  14   you make when you are an underwriter,  15   when you do due diligence. There are  16   lots of factors to consider; you just  17   -- you make these decisions.</p> <p>18                 BY MS. MORIATY:  19                 Q. If you as an underwriter heard  20   that 12 retailers out of 7,000 complained, would  21   you think that this is a significant issue?</p> <p>22                 MR. LEWIS: Objection to form.</p> <p>23                 THE WITNESS: I would think that  24   it would be less than I would have  25   guessed the normal sample would be, so</p>	<p>1                   EDWARD NECARSULMER, III  2   IP -- just before the IPO was effective and saw  3   that Adams' clubs were appearing in Costco  4   warehouses in diverse locations in the country,  5   that that was something you wouldn't have asked  6   some questions about?</p> <p>7                 MR. GLUCKOW: Objection to form.  8                 Incomplete hypothetical.  9                 Mischaracterizes the record.</p> <p>10                 You can answer.</p> <p>11                 THE WITNESS: I mean, you know,  12   it's very hard to look back, but I  13   again think that -- I again think that  14   you -- the judgment -- I keep going  15   back -- the totality of this, it is my  16   opinion, and I certainly believe it,  17   that they made an informed -- given all  18   the facts that they knew, they made a  19   reasonable judgment that it was not --  20   did not rise to the level of being a  21   risk factor.</p> <p>22                 BY MR. LEWIS:  23                 Q. The underwriters could have kept  24   the offering from going forward any time up to  25   the effective date, could they not, if they were</p>

<p>1                   EDWARD NECARSULMER, III  2 not satisfied as to -- that all proper  3 disclosures were being made?  4                   MR. GLUCKOW: Incomplete  5 hypothetical. Assumes facts not in  6 evidence.  7                   You can answer.  8                   THE WITNESS: Sure; you can even  9 do it after the effective date.  10 BY MR. LEWIS:  11                  Q. How late after the effective  12 date can you do it?  13                  MR. GLUCKOW: It calls for a  14 legal conclusion.  15 BY MR. LEWIS:  16                  Q. In your understanding, to the  17 best of your knowledge, how late after the  18 effective date can you stop an underwriting?  19                  MR. GLUCKOW: The same  20 objections.  21                  THE WITNESS: I don't remember --  22 I don't know if it's 30 or 40. There's  23 a number, I just don't know what it is,  24 or I don't remember what it is, and it  25 may have changed since I was actively </p>	<p>Page 190</p> <p>1  2                   C E R T I F I C A T E  3                   I, Pamela Harrison, a Notary  4 Public, do hereby certify:  5                   That EDWARD NECARSULMER, the  6 witness whose testimony is hereinbefore set  7 forth, was duly sworn by me and that such  8 testimony given by the witness was taken down  9 stenographically by me and then transcribed.  10                  I further certify that I am not  11 related to any of the parties to this  12 action by blood or marriage, and that I am in  13 no way interested in the outcome of this  14 matter.  15  16  17                  Pamela Harrison  18                  Registered Merit Reporter  19                  Certified Realtime Reporter  20                  CSR-NJ # 30XI00221600  21                  Notary Public  22                  Date: August 8, 2006  23  24                  (The foregoing certification of  25 this transcript does not apply to any  2                  reproduction of the same by any means, unless  3                  under the direct control and/or supervision of  4                  the certifying shorthand  5                  reporter.)</p>
<p>1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>	<p>Page 191</p> <p>1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>

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3 **ERRATA**  
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5 PAGE LINE CHANGE  
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2 **ACKNOWLEDGMENT OF DEPONENT**  
3

4 I, \_\_\_\_\_, hereby certify  
5 that I have read the foregoing pages \_\_\_\_\_  
6 to \_\_\_\_\_ and that the same is a correct  
7 transcription of the answers given by me  
8 to the questions therein propounded,  
9 except for the corrections or changes  
10 in form or substance, if any, noted in  
11 the attached Errata Sheet.

12 DATE SIGNATURE

13 Subscribed and sworn to before me this  
14 day of \_\_\_\_\_,  
15 200\_.  
16 My commission expires: \_\_\_\_\_

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22 Notary Public  
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50 (Pages 194 to 195)